

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014010682

ORDER GRANTING MOTION TO
DISMISS ISSUES 17 AND 18

On January 16, 2014, Student's parents on behalf of Student (Student) filed a request for due process hearing (complaint), naming the Irvine Unified School District (District) as the respondent.

On January 23, 2014, the District filed a motion to dismiss issues 17 and 18 of Student's complaint. The District contends that these issues are outside the jurisdiction of the Office of Administrative Hearings (OAH) to decide because they allege violations of Section 504 the Rehabilitation Act of 1973 (Section 504). (29 U.S.C. § 701 et seq.) Student has not filed any response to the motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].)

The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to entertain claims based on Section 504.

DISCUSSION

A review of the allegations in Student's complaint shows that the District is correct. Issues 17 and 18 allege violations of Section 504, not IDEA. Those two issues are outside the jurisdiction of OAH and must be dismissed from the case.

ORDER

The District's Motion to Dismiss is granted as to Issues 17 and 18. Those two issues are hereby dismissed. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Dated: February 4, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings